

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**ANTHONY CIMATO, JR.,**

**Plaintiff,**

**v.**

**16-CV-94A(Sr)**

**STATE FARM FIRE & CASUALTY COMPANY,**

**Defendant.**

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**DECISION AND ORDER**

This case was referred to the undersigned by the Hon. Richard J. Arcara, pursuant to 28 U.S.C. § 636(b)(1), for all pretrial matters. Dkt. #8.

Plaintiff commenced this action in New York State Supreme Court, County of Erie, on January 6, 2016, claiming breach of a homeowner's insurance contract and seeking to enforce the appraisal provision in his contract of insurance after his home and personal property was damaged by a burst water pipe on January 8, 2014. Dkt. #1. On June 21, 2014, defendant remitted a partial payment of \$109,552.85 for the loss. Dkt. #1. The matter was removed to this Court on February 4, 2016 based upon diversity of citizenship. Dkt. #1. Defendant denied plaintiff's claim on March 14, 2016. Dkt. #31, p.9.

Currently before the Court is defendant's motion to compel plaintiff to submit to deposition. Dkt. #41. In support of the motion, defense counsel declares that

while attempting to schedule plaintiff's deposition, plaintiff's counsel informed defense counsel that plaintiff had not responded to multiple attempts to communicate with counsel via telephone and email. Dkt. #41-1, ¶ 23.

Plaintiff did not respond to the motion to compel his deposition.

Defendant's motion is granted. Plaintiff shall submit to a deposition no later than **March 1, 2019**. Plaintiff is forewarned that his failure to submit to a deposition as directed by the Court will result in sanctions pursuant to Rule 37(b)(2) and Rule 41(b) of the Federal Rules of Civil Procedure, including an order precluding plaintiff from presenting testimony at trial in support of his claim of loss and/or dismissal of the action.

**SO ORDERED.**

DATED: Buffalo, New York  
January 15, 2019

*s/ H. Kenneth Schroeder, Jr.*  
**H. KENNETH SCHROEDER, JR.**  
**United States Magistrate Judge**